

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROYAL YATES,)	
)	
Plaintiff(s),)	No. C07-0798 BZ
)	
v.)	ORDER DENYING DEFENDANTS'
)	MOTIONS TO DISMISS
KINAN NIMEH, et al.)	
)	
Defendant(s).)	
)	
_____)	

Before me are defendants' motions to dismiss plaintiff's complaint for failure to state a claim upon which relief may be granted or, alternatively, for lack of subject matter jurisdiction.¹ For the reasons set forth below, defendants' motions are **DENIED**.²

The lone claim remaining against defendants alleges a

¹ All parties have consented to my jurisdiction pursuant to 28 U.S.C. § 636(c) for all proceedings, including entry of final judgment.

² Defendant Kinan Nimeh, through his counsel of record, filed his motion to dismiss on March 5, 2007. Defendant Syed Zaidi, acting pro per, filed his own motion on March 27, 2007. Zaidi asserted his intention to join in Nimeh's motion to dismiss "for all the reasons set forth therein." I therefore consider defendants' motions simultaneously.

1 state law claim for breach of fiduciary duty - a claim
 2 plaintiff describes in his opposition as "essentially a state
 3 law claim for churning."³ The investment account that was
 4 allegedly churned by defendants is the same account that was
 5 the subject of a prior case adjudicated before me.⁴ On
 6 February 23, 2007, plaintiff acknowledged payment of
 7 \$297,173.35, representing compensatory damages plus interest,
 8 as partial satisfaction of the judgment.⁵ See Yates v.
 9 GunnAllen Financial, et al., C05-1510 BZ, Civil Docket No.
 10 190.⁶ The punitive damage award is on appeal.

11 Defendants argue that plaintiff's latest suit must be
 12 dismissed pursuant to the "single satisfaction" rule, which

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 14 ³ In his opposition, plaintiff withdrew the two other
 15 claims that initially formed the basis of his complaint. These
 16 included a federal cause of action under the Securities
 Exchange Act of 1934 and a state law cause of action entitled
 "Unconscionability." With withdrawal of the federal claim,
 this Court's jurisdiction lies in diversity.

17 ⁴ In the prior case, plaintiff sued GunnAllen
 18 Financial, Inc. and stockbroker Curtis Williams for their
 19 involvement in the churning his investment account. After a
 20 jury awarded him \$240,382 in compensatory damages, \$1,442,292
 21 in punitive damages as to GunnAllen, and \$120,191 in punitive
 damages as to Williams, plaintiff refused a remittitur of the
 punitive damage award against GunnAllen. A second trial solely
 on the amount of punitive damages resulted in a verdict of
 \$586,000 in punitive damages as against GunnAllen.

22 ⁵ Plaintiff admits that "GunnAllen Financial, Curtis
 23 Williams, and present defendants all were jointly responsible
 24 for the compensatory damages resulting from the churning of Mr.
 Yates' account," that all defendants are to be considered joint
 25 tortfeasors, and that he can collect no more compensatory
 damages on his churning claim. Pl's. Opp. at 2.

26 ⁶ Defendant Nimeh requested that I take judicial notice
 27 of the court files relating to the prior litigation. These
 28 being matters of public record, and hearing no objection from
 plaintiff, I **GRANT** defendant Nimeh's request and take judicial
 notice of the files lodged with the Court in Yates v. GunnAllen
Financial, et al., C05-1510 BZ.

1 California follows.⁷ The narrow issue before me is whether
 2 California's single satisfaction rule bars plaintiff from
 3 seeking punitive damages from these defendants based on their
 4 alleged involvement in the underlying fraud for which
 5 plaintiff has been made whole.⁸

6 Neither party cited case law directly on point, and I am
 7 aware of no controlling California precedent.⁹ "A federal

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 9 ⁷ "An injured person is entitled to only one
 10 satisfaction of judgment for a single harm, and full payment of
 11 a judgment by one tortfeasor discharges all others who may be
 12 liable for the same injury." Fletcher v. California Portland
 13 Cement Co., 99 Cal. App. 3d 97, 99 (1979); see also In re
 14 Zelis, 66 F.3d 205, 210 (9th Cir. 1995) (discussing California
 15 law). The rule applies "whether a single judgment has been
 16 obtained against joint or concurrent tortfeasors, whether
 17 separate judgments of equivalent or disparate amounts have been
 18 obtained against tortfeasors, or whether no other judgment has
 19 been obtained against other tortfeasors." Fletcher, 99 Cal.
 20 App. At 99 (citing Watson v. McEwen, 225 Cal. App. 2d 771,
 21 774-775 (1964) and Winzler & Kelly v. Superior Court, 48 Cal.
 22 App. 3d 385, 392-393 (1975)).

23 ⁸ Under Federal Rule of Civil Procedure 12(b)(6), a
 24 claim may be dismissed if, as a matter of law, "a plaintiff
 25 could prove no set of facts in support of his claim that would
 26 entitle him to relief." Parks Sch. of Business, Inc. v.
 27 Symington, 51 F.3d 1480, 1484 (9th Cir. 1995). In deciding
 28 whether to dismiss a claim under Rule 12(b)(6), the Court is
 generally limited to reviewing only the complaint, but may
 review materials which are properly submitted as part of the
 complaint and may take judicial notice of public records
 outside the pleadings. Lee v. City of Los Angeles, 250 F.3d
 668, 688-89 (9th Cir. 2001).

⁹ Other jurisdictions are split on the issue. Compare
 those jurisdictions barring punitive damage claims against a
 joint tortfeasor subsequent to full satisfaction on a judgment,
see Bridgestone/Firestone North America Tire, L.L.C. v.
Naranjo, 206 Ariz. 447, 451 (2003); Ruiz De Molina v. Merritt &
Furman Ins. Agency, Inc., 220 F. Supp. 2d 1249, 1253-57 (N.D.
 Ala. 2002); Mike Loehr & Co., Inc. v. Wal-Mart Stores, Inc.,
 919 F.Supp. 244, 248 (E.D. Tex. 1996); Sprague, Levinson &
Thall v. Advest, Inc., 623 F. Supp. 11, 13 (D.C. Pa. 1995))
 with those jurisdictions allowing such claims, see Turner v.
Firststar Bank, N.A., 363 Ill. App. 3d 1150, 1158-59 (2006);
McGee v. Bruce Hospital System, 344 S.C. 466, 472 (2001);
Sanchez v. Clayton, 117 N.M. 761, 768 (1994); Beerman v. Toro

1 court should apply state law as it believes the highest court
2 of the State would apply it." Palmer v. Stassinis, 419 F.
3 Supp. 2d 1151, 1155 (N.D. Cal. 2005) (citing Jones-Hamilton
4 Co. v. Beazer Materials & Servs., Inc., 973 F.2d 688, 692 (9th
5 Cir.1992)); see also Cunningham v. Connecticut Mut. Life Ins.,
6 845 F. Supp. 1403, 1411 (S.D. Cal. 1994) ("If state law is
7 unclear, the federal court is required to determine how state
8 law will be construed if the question were before the state's
9 highest court.").

10 I conclude that under California law plaintiff's suit is
11 not barred by the single satisfaction rule. First, it appears
12 that only the complete satisfaction of a judgment will bring
13 the single satisfaction rule into play. See McCall v. Four
14 Star Music Co., 51 Cal. App. 4th 1394, 1398-99 (1996) ("where
15 fewer than all of the joint tortfeasors satisfy less than the
16 entire judgment, such satisfaction will not relieve the
17 remaining tortfeasors of their obligation under the
18 judgment."). Inasmuch as the punitive damage judgment has not
19 been satisfied, the single satisfaction rule, if applicable at
20 all, must be applied with caution.¹⁰

21 Indeed, California courts emphasize that the single
22 satisfaction rule "is equitable in its nature, and . . . its
23 purpose is to prevent unjust enrichment.'" Milicevich, 155

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25 Mfg. Co., 1 Haw. App. 111, 118-19 (1980).

26 ¹⁰ To rule otherwise would create the possibility that
27 if the outstanding punitive damages judgment were reversed on
28 legal grounds, such as that GunnAllen had not acted through an
officer or managing agent, plaintiff could wind up with no
punitive damages even though two juries have found conduct
worthy of being punished and deterred.

1 Cal. App. 3d at 1003 (quoting Prosser, Joint Torts and Several
2 Liability, 25 Cal.L.Rev. 413, 422 (1937)); see also McCall, 51
3 Cal. App. 4th at 1399 (noting that the rule is designed to
4 prevent double recovery); Winzler, 48 Cal. App. 3d at 392
5 ("the injured party can receive only one satisfaction for his
6 injury"). There is no danger of double recovery here for, as
7 plaintiff correctly argues, any verdict assigning defendants
8 liability for plaintiff's compensatory damages will be offset
9 so as to prevent plaintiff's unjust enrichment. See Carr v.
10 Cove, (1973) 33 Cal. App. 3d 851, 854 ("Only one complete
11 satisfaction is permissible, and, if partial satisfaction is
12 received from one, the liability of others will be
13 correspondingly reduced."); Winzler, 48 Cal. App. 3d at 392
14 (partial satisfaction "has the effect of a discharge pro
15 tanto.") (internal quotations and citation omitted); see,
16 e.g., McGee, 545 S.C. at 472 (discussing the trial process on
17 remand).

18 Defendants argue that because an award of compensatory
19 damages is a prerequisite to an award of punitive damages
20 under California law, plaintiff's current claim must fail.
21 See, e.g., Cheung v. Daley, 35 Cal. App. 4th 1673 (1995). The
22 rule, however, is that an award of compensatory damages or *its*
23 *equivalent* is a prerequisite to an award of punitive damages.
24 See id. at n.8; see also Sole Energy Co. v. Petrominerals
25 Corp., 128 Cal. App. 4th 212, 238 (2005) ("An award of actual
26 damages, even if nominal, is required to recover punitive
27 damages."). In other words, "[t]he requirement of 'actual
28 damages' imposed by section 3294 is simply the requirement

1 that a tortious act be proven if punitive damages are to be
2 assessed." Esparza v. Specht, 55 Cal. App. 3d 1, 6 (1976).

3 Thus, where a claimant's award of compensatory damages
4 was completely offset, he could still receive punitive
5 damages. See Esparza, 55 Cal. App. 3d at 9 (cited with
6 approval in Cheung, 35 Cal. App. 4th at 1677 n.8). Here,
7 plaintiff has already demonstrated the commission of a
8 tortious act, and may yet prove defendants' liability for some
9 part of the damages arising therefrom. It does not follow
10 that because plaintiff's compensatory damage claim may be
11 completely offset, he is automatically precluded from
12 recovering punitive damages against defendants.¹¹

13 Because plaintiff's suit does not run afoul of
14 California's single satisfaction rule, and because plaintiff's
15 recovery of punitive damages against defendants is not barred
16 as a matter of law, I decline to apply the single satisfaction
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19 ¹¹ Neither Kluge v. O'Gara, 227 Cal. App. 2d 207 (1964)
20 nor Jackson v. Johnson, 5 Cal. App. 4th 1350 (1992) mandate
21 dismissal of plaintiff's claim. After receiving full
22 satisfaction on a judgment in malpractice, the Kluge plaintiff
23 sued the former defendant and others alleging a conspiracy to
24 undermine the earlier malpractice litigation. Noting that the
25 plaintiff had recovered all damages prayed for in the prior
26 litigation, the court sustained defendants' demurrers because
27 "whatever defendants did to defeat the malpractice action
28 caused no actual damage to plaintiffs." Kluge, 227 Cal. App. 2d
at 210. The single satisfaction rule played no part in the
court's decision, and the finding by the court that defendants
caused no damage to plaintiff distinguishes it from the instant
case. In Jackson, a jury awarded plaintiff with "\$0" in actual
damages but also awarded punitive damages. The court read the
verdict as finding no actual loss - an element of malpractice -
and therefore struck the punitive damage award. Jackson, 5
Cal. App. 4th at 1355-58. The failure to prove up a valid
claim and the express finding of no loss distinguishes Jackson
from the present case.

1 rule in the manner encouraged by defendants.¹²

2 Defendants' second argument - that this Court lacks
3 subject matter jurisdiction - also fails. For any suit lying
4 in diversity, plaintiff must demonstrate both complete
5 diversity and that "the matter in controversy exceeds the sum
6 or value of \$75,000, exclusive of interest and costs." 28
7 U.S.C. § 1332(a). "In calculating the amount in controversy,
8 the Court must also consider punitive damages that plaintiff
9 can recover as a matter of law." Surber v. Reliance Nat.
10 Indem. Co., 110 F. Supp. 2d 1227, 1232 (N.D. Cal. 2000).
11 California allows for the recovery of punitive damages for
12 breach of the fiduciary duty. See Cal. Civ. Code § 3294(a)
13 (allowing recovery of exemplary damages "for the breach of an
14 obligation not arising from contract"). And, as already
15 discussed, plaintiff's claim for punitive damages is not
16 barred.

17 Considering the large sums of punitive damages awarded in
18 the previous litigation, plaintiff's request for \$2,000,000
19 cannot be said to be in bad faith. I certainly cannot say "to
20 a legal certainty that the claim is really for less than the
21 jurisdictional amount." St. Paul Mercury Indem. Co. v. Red

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23 ¹² For the first time in their reply, defendants argue
24 that an award of punitive damages in this case would
25 necessarily run afoul of the Constitutional due process
26 requirement that punitive damages be "both reasonable and
27 proportionate to the amount of harm to the plaintiff and to the
28 general damages recovered." State Farm Mut. Auto Ins. Co. v.
Campbell, 538 U.S. 408, 426 (2003). Insofar as any trial in
this matter would require a jury first to determine defendants'
culpability for actual damages to plaintiff, see McGee, 344
S.C. at 472 (describing the trial process on remand), I cannot
conclude as a matter of law that a punitive damage award in
this case will offend the dictates of State Farm.

1 Cab Co., 303 U.S. 283, 288 (1938).¹³

2 Plaintiff's claim is not barred by the single
3 satisfaction rule. Nor does his complaint fail to meet the
4 minimum amount in controversy requirement under 28 U.S.C.
5 section 1332(a). While I remain troubled by the duplicative
6 nature of this litigation, the only matters before me are
7 defendants' motions to dismiss and they are **DENIED**.

8 Dated: May 18, 2007

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Bernard Zimmerman
United States Magistrate Judge

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¹³ The cases defendants cite are distinguishable.
26 Unlike in Hunter v. District of Columbia, 384 F. Supp. 2d 257
27 (D.D.C. 2005), the potential actual damages here are not so
28 limited so as to make clear that an award of punitive damages
sufficient to meet the minimum amount in controversy
requirement would necessarily run afoul of State Farm.